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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of

Federal-State Joint Board  
on Universal Service

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CC Docket No. 96-45

COMMENTS OF LCI INTERNATIONAL, INC.

Respectfully submitted,

LCI INTERNATIONAL, INC.

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**COMMENTS OF LCI INTERNATIONAL, INC.**

LCI International, Inc. ("LCI"), the nation's sixth largest interexchange company ("IXC") by its attorneys, hereby comments on the Recommended Decision ("Recommended Decision") of the Federal-State Joint Board ("Joint Board") in the above-captioned proceeding.<sup>1</sup>

**INTRODUCTION AND SUMMARY**

This proceeding presents the Commission with a historic opportunity to provide all Americans with access to high quality, advanced telecommunications services at affordable rates. LCI strongly supports the efforts of the Joint Board and the Commission in this regard and believes that the Joint Board's Recommended Decision is an excellent starting point for developing effective, coherent, equitable and nondiscriminatory universal service policies. However, as a provider of interexchange services nationwide and internationally, LCI urges the Commission to be vigilant in ensuring that Congress' mandate -- that *all* providers of interstate telecommunications services contribute to the preservation and advancement of

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<sup>1</sup> *In the Matter of Federal-State Joint Board on Universal Service, Recommended Decision, CC Docket No. 96-45, (released November 8, 1996) (hereinafter "Recommended Decision").*

universal service on an equitable and nondiscriminatory basis -- is fulfilled. This will be critical to the evolution of a truly competitive telecommunications market as envisioned by Congress.<sup>2</sup>

**I. ALL PROVIDERS OF INTERSTATE TELECOMMUNICATIONS SERVICES SHOULD BE REQUIRED TO CONTRIBUTE TO UNIVERSAL SERVICE FUNDING**

Section 254(d) explicitly requires that "[e]very telecommunications carrier that provides interstate telecommunications services *shall contribute*, on an equitable and nondiscriminatory basis"<sup>3</sup> to the support of universal service funding. Given the extraordinary dimensions of the financial support required -- estimates range from \$5 billion to \$20 billion annually -- equal participation in the funding obligation by all interstate carriers<sup>4</sup> is absolutely required to ensure that universal service funding is competitively neutral. No particular technology or class of carrier should be handed an artificial competitive advantage by virtue of the fact that it is permitted to avoid this significant expense which their competitors must bear.

LCI commends the Joint Board for suggesting a comprehensive list of interstate carriers which must be required to contribute equally to the universal service funding effort. LCI agrees that "interstate telecommunications" includes each of the following: cellular telephone, paging, mobile radio, operator services, PCS, SMR, access services, packet switched services, WATS, toll-free, 900, MTS, private line, telex, telegraph, video, satellite, intraLATA and resale services.<sup>5</sup> LCI cautions, however, that this list should not be

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<sup>2</sup> 47 U.S.C. § 254(b)(4).

<sup>3</sup> 47 U.S.C. § 254(d) (emphasis added).

<sup>4</sup> Other than carriers which qualify for the *de minimis* exception.

<sup>5</sup> *Recommended Decision* at ¶ 785.

considered exhaustive. The obligation should be crafted broadly to include all telecommunications services including new services not yet generally available.

LCI takes particular exception to the Joint Board's recommendation that information service providers and enhanced service providers not be required to contribute to support mechanisms.<sup>6</sup> Increasingly, these service providers compete directly with providers of basic telephone services. "Voice over the Internet" services, for example, increasingly are being touted as a cost-effective alternatives to basic interexchange services. Simply put, exempting providers of such services from the funding obligation, and thus providing them an inherent cost advantage over competitors, is flatly inconsistent with the statutory mandate that funding be made "equitable and nondiscriminatory." Thus, LCI urges the Commission to reverse the Joint Board Recommendation on this point.

## **II. COMPETITIVE NEUTRALITY REQUIRES THAT INTRASTATE REVENUES BE INCLUDED IN ASSESSING CARRIER CONTRIBUTIONS FOR UNIVERSAL SERVICE SUPPORT**

LCI supports the Joint Board's recommendation to fund universal service support for schools and libraries by assessing interstate *and intrastate* revenues and strongly urges the Commission to fund the modified high cost and low income assistance programs in the same way.<sup>7</sup> A failure to assess intrastate revenues will undermine the emergence of real competition by effectively excusing incumbent local exchange companies ("ILECs"), including the Bell Operating Companies and GTE, from equitable participation in the funding obligation. This inequity results from the fact that the vast majority of ILEC revenues are generated by providing intrastate services, while most IXCs, against which the ILECs now

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<sup>6</sup> *Recommended Decision* at ¶ 790.

<sup>7</sup> *Recommended Decision* at ¶ 817.

compete, generate the majority of their revenues by providing interstate services. Thus, if intrastate revenues are excluded from assessment, ILECs would be assessed on only a small fraction of their total revenue, while IXC, such as LCI, would be assessed on the vast majority of their total revenue.

If intrastate revenues are not assessed, the burden of funding universal service annually will fall disproportionately on the shoulders of the IXCs, creating a substantial and artificial cost advantage for the ILECs against whom they must now compete directly. Indeed, since the ILECs represent such a large proportion of the U.S. telecommunications industry, their effective exclusion from participation would inflate the funding obligation of their competitors substantially. This is particularly unseemly in light of the fact that the ILECs will be the nearly exclusive recipients of universal service funding. Consequently, exclusion of intrastate revenues from assessment would result in an unintended, but harmful, form of competitive handicapping which favors traditionally intrastate carriers over that have operations that are predominantly interstate. In order to ensure competitive neutrality, the Commission must assess both intrastate and interstate revenues for purposes of funding universal service.

The Commission's jurisdiction to assess intrastate revenues for a fair contribution to universal service support should not be in doubt. Section 254(b)(4) grants the FCC plenary authority to require "[a]ll providers of telecommunications services [to] make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service." Although a telecommunications carrier must provide at least some interstate service to be subject to assessment,<sup>8</sup> both interstate and intrastate operations of an interstate

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<sup>8</sup> See generally 47 U.S.C. § 254(d).

carrier are assessable as required to make the funding obligation "equitable and nondiscriminatory."<sup>9</sup> This only makes sense since the universal service funding thus derived will be used to support the provision of intrastate services.

Moreover, the inclusion of intrastate revenues in the assessment base does not materially intrude on the authority of state regulators. Congress specifically provided for the creation of a Federal-State Joint Board to ensure that the viewpoint of state regulators is adequately represented in formulating universal service reform.<sup>10</sup> As importantly, Section 254(f) makes clear that state regulators may create their own universal service programs based on local needs so long as such rules are not inconsistent with the rules adopted in this proceeding. Thus, inclusion of intrastate revenues in the federal assessment base will not preclude state regulators from establishing complementary universal service plans of their own.

### **III. SINGLE-LINE BUSINESSES SHOULD NOT BE ELIGIBLE FOR UNIVERSAL SERVICE SUPPORT**

The Joint Board recommends providing universal service support for designated services provided to single-connection businesses in rural, insular and other high cost areas.<sup>11</sup> LCI strongly disagrees. Universal service support should not subsidize for profit, commercial operations -- whether large or small. As the Florida Public Service Commission pointed out in its comments to the Joint Board, the goal of promoting universal service relates to maximizing the number of households that have telephone service.<sup>12</sup> Moreover,

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<sup>9</sup> *Id.*

<sup>10</sup> 47 U.S.C. § 254(a)(1).

<sup>11</sup> Recommended Decision at ¶ 91.

<sup>12</sup> See Recommended Decision at ¶ 88.

as NTIA suggests, the cost of telephone service is only a fraction of a business's overall costs, which viable businesses should be able to cover.<sup>13</sup> Further, as MCI argues, extending universal service support to businesses will increase the level of support excessively.<sup>14</sup>

The cost of phone service, like the cost of rent and utility service, is a basic expense that all businesses, including small business, must accommodate. Subsidizing single-line businesses, as the Joint Board recommends, would distort the universal service system beyond recognition and would detract from the primary purpose of universal service -- to ensure that all Americans (*not* all American businesses) have access to affordable advanced telecommunications services. Notably, where Congress believed that special circumstances required universal service support be extended to non-residential subscribers -- such as schools, libraries and rural health care providers -- it provided for it expressly in Section 254. The Commission should not expand that list by adding untold thousands of small business customers to the list of subsidized firms.

#### **IV. THE COMMISSION SHOULD USE THE HATFIELD PRICING MODEL TO DETERMINE THE SIZE OF THE UNIVERSAL SERVICE FUND**

The Commission must take special care in selecting a cost model to be used in sizing the high cost fund. Selection of a model which overestimates costs would be a serious error, since it would result in an excessively large Universal Service Fund and provide an undeserved windfall for ILECs that serve high cost areas.

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<sup>13</sup> See Recommended Decision at ¶ 88.

<sup>14</sup> See Recommended Decision at ¶ 88.



LCI fully supports the use of a proxy cost model to calculate forward-looking economic costs. Use of a proxy model offers two critical advantages over reliance on ILEC-specific cost studies. First, use of forward-looking costs is most consistent with the newly competitive local service environment. Forward-looking cost results are not distorted by historic accounting and depreciation policies. Similarly, a forward-looking proxy model does not require arbitrary allocations or disaggregations of existing investment to smaller geographic units. And use of a forward-looking proxy model avoids controversy over whether embedded costs represent efficient or inefficient management. Second, proxy cost models are competitively neutral. They produce subsidy funding which is the same for all service providers by estimating the costs that *any efficient provider* would incur in providing service to a particular area.

The Commission should disregard the criticism levelled by some ILECs that proxy cost models, such as the Hatfield Model or the Benchmark Cost Model ("BCM"), creates an unreal "hypothetical" network. The truth is that all cost *models* that are truly *efficient and forward-looking* create a network which differs from actual networks in place today. This is because proxy cost models eliminate inefficiently incurred costs and antiquated technologies, and they assume that modern productivity improvements will be implemented. This is equally true of ILEC cost models which are correctly designed in accordance with TSLRIC costing principles. Thus, when some ILECs oppose the use of independently developed proxy cost models, their true objection is to the use of a publicly available tool to ascertain TSLRIC costs.

Specifically, LCI advocates using the steadily evolving Hatfield Model.<sup>15</sup> As described by AT&T, the Hatfield Model is a "flexible, publicly available engineering model that estimates the economic costs of providing basic narrowband telephone services to consumers in any and all geographic areas in the United States."<sup>16</sup> The key attributes of the Hatfield Model are that it: (1) incorporates *all* network elements (including loop, local switching, interoffice transport, signaling); (2) estimates costs for both basic local exchange service and individual network elements; (3) uses TSLRIC principles (TELRIC for network elements); (4) performs detailed cost breakout; and (5) provides an extensive set of user inputs through use of a Graphical User Interface. Perhaps its greatest benefit is that the Hatfield Model is a *publicly available* tool, which can be run by any regulator, or any contributor to, or recipient of, universal service funding. Thus, its results can be tested by all interested parties, and the results can be easily manipulated to account for revised assumptions or alternative input data.

Moreover, the Hatfield Model is more consistent with the Commission's pricing principles and more complete than other proxy models. It uses the same methodology for unbundled elements, interconnection and estimating the cost of universal service. In addition, it is based on TELRIC principles and captures a reasonable share of forward-looking joint and common costs. As compared to the BCM2 model specifically, Hatfield Model Version 2.2 is superior because it estimates the actual costs of local exchange carriers,

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<sup>15</sup> The most recent version of the model filed with the Commission is the Hatfield Model, Version 2.2. LCI understands that the Hatfield Model has been subject to further fine-tuning, and a newly revised version is likely to be filed in January.

<sup>16</sup> See Recommended Decision at ¶ 262.

includes more network elements, incorporates business, special access and payphone lines and employs a more precise calculation of the monthly cost to provide services and elements.

Special care has been taken to use actual ILEC network information in the Hatfield Model wherever it is reasonable, feasible and advisable. For example, demographics and terrain features are specific to the areas studied. Existing ILEC wire centers, tandems and signal transfer points are incorporated. The model relies on ILEC-reported numbers of lines and traffic statistics. Expense data and capital parameters are made appropriate to the LEC being studied, with forward-looking adjustments. Allowance is made for local anomalies. Network configurations and technologies utilized are those which are currently deployed by the ILECs. And a "bottoms-up" approach which accounts both for current levels of demand and reasonable growth is used to size the network. Accordingly, while the Hatfield Model produces results which are "forward-looking," it carefully includes use of actual ILEC data where necessary to produce accurate estimates. LCI believes that the Hatfield Model reaches a better balance between these somewhat competing notions than any other cost model suggested to date.

**V. A 20% DISCOUNT IS ADEQUATE TO PROMOTE ACCESS TO ADVANCED TELECOMMUNICATIONS SERVICES FOR SCHOOLS AND LIBRARIES**

Telecommunications service providers have an obligation to provide advanced telecommunications services at a discount. The discount for such advanced telecommunications service should be sufficient to make such services "affordable."<sup>17</sup>

However, "affordable" is not synonymous with "virtually free." Discounts cannot be so deep

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<sup>17</sup> 47 U.S.C. § 254(h)(1)(B).

as to leave carriers with unrecoverable costs, as would be the case under the Joint Board's proposal.

The Joint Board's recommendation that "all eligible schools and libraries may receive discounts of between 20 and 90 percent on all telecommunications services, Internet access and internal connections, subject to a \$2.25 billion annual cap" is insupportable and goes far beyond both the language of the statute and Congress' intent.<sup>18</sup> Although LCI recognizes that the statute requires carriers to make advanced telecommunications services available at discounted rates, a 20% to 90% graduated discount for all advanced telecommunications services, as recommended by the Joint Board, would constitute an abuse of discretion.<sup>19</sup>

LCI proposes adoption of a limited version of the Joint Board's proposal. Carriers should be required to provide a discount of no more than 20% to eligible schools and libraries for advanced telecommunications services. The discount should be keyed off the highest available prevailing rate among all carriers, so as to not unfairly penalize carriers that already offer significantly discounted rates. In addition, "advanced telecommunications services" should be limited to those services that are not "core" services which qualify for high cost support under section 254(c)(1). Specifically, the Commission should clarify that "advanced telecommunications services" does *not* include voice grade access to the public switched network, DTMF or touch-tone, single-party service, access to emergency service, access to operator service, access to interexchange service and access to directory assistance.<sup>20</sup>

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<sup>18</sup> Recommended Decision at ¶ 440.

<sup>19</sup> 47 U.S.C. § 254(h)(2).

<sup>20</sup> See Recommended Decision at ¶ 67.

Importantly, while LCI acknowledges that Section 254 permits carriers to offset an amount equal to the amount of the discount against its universal service obligation, it notes that, to the extent that the fund is capped at \$2.25 billion annually, it is likely that some carriers will be left with credit that cannot be claimed in any given year. In other words, carriers may provide service at a discounted rate but not be able to offset the discount because of the \$2.25 billion cap on the fund. There can be little doubt that rates which are discounted up to 90 percent are below the cost of service, and requiring such below cost discounts once the fund is exhausted would constitute an unconstitutional "taking."

As a participant in an very competitive market, LCI often attracts customers by offering lower prices than other carriers. Although LCI generally supports giving eligible schools and libraries a price break in excess of its already competitive prices in order to further educational goals, no competitor, including LCI, can price below cost and stay in business. Therefore, LCI believes that the mandatory discount for eligible schools and libraries for "advanced" telecommunications services should not exceed 20%

**VI. THE CRITERIA ESTABLISHED FOR DETERMINING "RURAL TELEPHONE COMPANIES" UNDER 47 U.S.C. § 153(37) SHOULD BE USED TO DETERMINE ELIGIBLE "RURAL HEALTH CARE PROVIDERS"**

The Joint Board recommends defining "rural" areas for purposes of implementing Section 254(h)(1)(A) of the Act by using the Goldsmith Modification of the OMB MSA method.<sup>21</sup> In recommending the OMB MSA method, subject to the Goldsmith Modification, the Joint Board explicitly, and wrongly, rejects suggestions that the Commission use a definition for "rural" that is consistent with the Act's definition of "rural

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<sup>21</sup> Recommended Decision at ¶ 693. The Joint Board notes that the Goldsmith Modification identifies by census tract or block more densely-populated areas in large, otherwise rural counties and thus ameliorates the problem of missing some rural areas. *Id.*

telephone company."<sup>22</sup> LCI believes that the statutory definition of "rural telephone company" should be employed, in part, to identify "rural health care providers."

Specifically, Section 153(37)(A) of the Act offers a sound basis for distinguishing between rural and urban areas for purposes of universal service support for health care providers.

The Joint Board declines to define "rural" by reference to the definition of "rural telephone company" in the Act asserting that it "does not provide a geographic boundary".<sup>23</sup>

Moreover, the Joint Board claims that, in defining "rural telephone company," the Act meant "to distinguish telecommunications companies from one another, not service and rate areas for health care providers . . .".<sup>24</sup> LCI disagrees with the Joint Board on both points.

The Act clearly bases its definition of "rural telephone company" on geographically identifiable LEC study areas or service territories. LEC study areas are identified on maps filed with state public utility commissions. Thus, it is no more difficult to ascertain the boundaries of a LEC study area than it is to ascertain the boundaries of a municipality or census block. Moreover, the Act references demographic information established by the Bureau of the Census in its definition of "rural telephone company." This information is readily available, highly reliable and does not attempt to reflect statistics or information that is unrelated to population density. Thus, it is perfectly appropriate to rely on census data to

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<sup>22</sup> Recommended Decision at ¶ 696.

<sup>23</sup> Recommended Decision at ¶ 696. The Act defines a "rural telephone company" in part as a local exchange carrier that provides "common carrier service to any local exchange carrier study area" that *does not include* either: (1) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or (2) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993.

<sup>24</sup> Recommended Decision at ¶ 696.

evaluate whether an area is "rural" or "urban" for purposes of identifying rural health care providers.

With reference to the services that should be subsidized for rural health care providers, LCI joins Ameritech in being skeptical about whether access to advanced services for rural health care providers would be technically feasible or economically reasonable.<sup>25</sup> Moreover, LCI concurs with BellSouth's assessment that additional advanced services should not be mandated because it would involve substantial new investments that may not be sound.<sup>26</sup> Thus, LCI concurs with BellSouth's recommendation that only transmission capabilities of 1.544 Mbps should be provided to all rural health care providers as part of the universal service support system.

#### **VII. CARRIERS MUST BE PERMITTED TO IDENTIFY A UNIVERSAL SERVICE FUND SURCHARGE ON RETAIL END-USER BILLS**

The Joint Board expressly rejects suggestions that support mechanisms be funded through the SLC or a retail end-user surcharge stating that "these mechanisms would violate the statutory requirement that carriers, not consumers, finance support mechanisms."<sup>27</sup> LCI believes that the Joint Board's position is indefensible.

Section 254 clearly contemplates that every provider of interstate telecommunications services will contribute to the support and maintenance of universal service. This mandatory contribution to universal service is a form of taxation, which, like other forms of taxation, is rolled into the costs of providing service that are reimbursed by end users. There is no justifiable basis for requiring carriers to drive the cost of universal service underground by

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<sup>25</sup> Recommended Decision at ¶ 746.

<sup>26</sup> *Id.*

<sup>27</sup> Recommended Decision at ¶ 812.

incorporating it into the rates carriers charge for service. Indeed, doing so would violate the clear intent of Congress to make universal service support mechanisms explicit and identifiable.<sup>28</sup>

The Joint Board's impression that carriers are ultimately liable for funding universal service without recourse to consumers is untenable. As a practical matter, the Act makes carriers accountable for remitting contributions in the same way carriers are accountable for remitting sales and gross receipts taxes. Contrary to the Joint Board's claim, nothing in the Act limits the right of carriers to pass its obligations through to end users in the form of a surcharge. Therefore, the Commission should reject the Joint Board's proposal that carriers not be permitted to identify a surcharge for universal service on retail end-user bills.

#### CONCLUSION

For the reasons set forth herein, LCI respectfully requests that the Commission assess both the intrastate and interstate revenues of providers of interstate telecommunications services in the funding base for universal service across the board. In addition, the Commission should adopt the Hatfield Model to determine the cost of the universal service fund. Moreover, the Commission should adopt a limited version of the Joint Board's proposal regarding discounts for eligible schools and libraries and should reject completely the Joint Board's proposal to provide universal service support for single-connection businesses. Carriers should be required to provide a discount of no more than 20% to eligible schools and libraries for advanced telecommunications services, which should be limited to those services that are not "core" services for high cost support under section

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<sup>28</sup> S. Rep. No. 104-230, at 131 (1996).



254(c)(1). Finally, the Commission also should refer to the definition of "rural telephone company" in the Act for purposes of identifying eligible "rural health care providers."

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I do hereby certify that on this 19th day of December, 1996, a true and correct copy of the foregoing *Comments of LCI International, Inc.* was served via first class mail to the persons on the attached service list.

  
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